

ORIGINAL

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAR 18 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Revision of the Commission's Rules to)
Ensure Compatibility With Enhanced)
911 Emergency Calling Systems)

CC Docket No. 94-102

**COMMENTS OF BELL ATLANTIC MOBILE, INC.
ON PETITIONS FOR RECONSIDERATION**

Bell Atlantic Mobile, Inc. (BAM) supports the Petitions for Reconsideration of the Cellular Telecommunications Industry Association (CTIA) and BellSouth Corporation (BellSouth), filed February 17, 1998, in this proceeding. CTIA and BellSouth raise specific concerns as to the Commission's Memorandum Opinion and Order, FCC 97-402, released December 23, 1997 (Order), which imposed "911" and "Enhanced 911" service requirements on providers of commercial mobile radio services (CMRS). BAM agrees that these concerns require reconsideration, and urges the Commission to act on them promptly.

1. The Order Fails to Provide CMRS Providers With the Same Liability Limitations Available to Other Carriers. The Order places CMRS providers in an untenable and unlawful "Catch-22" situation. On the one hand, it requires them to serve subscribers and non-subscribers alike (an obligation which is not imposed on other types of carriers). On the other hand, it refuses to take any action that would give CMRS providers any means to limit liability toward non-subscribers

(again in contrast to the mechanisms available to other carriers to limit liability). The Order admits that CMRS providers "cannot contractually insulate themselves from liability when non-subscribers use their systems," but then inconsistently finds it "reasonable for a carrier to attempt to make the use of its network by a non-subscriber subject to the carriers' terms and conditions for liability." Order at ¶ 140. The Order not surprisingly fails to explain how CMRS providers could accomplish this, because they cannot.

The Order's treatment of 911-related CMRS liability is arbitrary and capricious. Having found that it was "reasonable" for CMRS carriers to obtain limits on liability, the Order then refused to take the very action that would enable carriers to obtain such limits. Having found that contractual limits were unavailable for non-subscribers, the Order provided no alternative way to limit liability. The Order is also arbitrary because it places the obligation to serve non-subscribers on CMRS carriers alone. Other carriers have no such obligation. The Order failed to address objections in the record that such selective discrimination against CMRS providers was unjustified and lacked a public interest rationale.

BAM agrees with CTIA and BellSouth that the Commission should on reconsideration grant CMRS providers the ability to limit their liability with regard to all 911 calls.¹

¹The Order's refusal to provide CMRS carriers with limits on liability is particularly unjustified given a recent action of the Office of Engineering and Technology. Letter from Richard M. Smith to David L. Sieradzki, February 11, 1998. That action granted an expanded experimental license to AirCell, Inc. to provide air-to-ground cellular service, despite concluding that the service had the

2. The Order's Findings Compel the Commission to Remove Impediments to Nationwide Wireless Coverage. The Commission finds important public interest benefits in ubiquitous wireless 911 service and expresses its "commitment to the rapid implementation of the technologies needed to bring emergency assistance to wireless callers throughout the United States." Order at ¶ 6. Yet the Commission has taken no forceful action to remove the most serious impediments to achieving that goal -- moratoria and other resistance by federal agencies and local zoning boards that are denying carriers the ability to build out their systems and provide seamless coverage. Requests by CTIA and others that the Commission implement the mandates of Section 704 of the 1996 Telecommunications Act have not been addressed.² If, as the Order proclaims, ubiquitous wireless 911 coverage is in the public interest, then the Commission should promote that goal, not undermine it by failing to act. BAM thus agrees with CTIA that the Commission must remove these obstacles to broader wireless (and thus 911) coverage.

3. Clarification of Wireless 911 Rules and Deadlines. BAM supports CTIA's concerns (Petition at 16-24) that the final rules requiring provision of 911 and E911 services are ambiguous in many respects, and that those ambiguities

potential to create interference under certain conditions. "911" emergency calls would, of course, not be immune to any such interference. It is arbitrary for the Commission on the one hand to increase cellular carriers' risk of liability from interference and dropped 911 calls caused by another carrier or other forces beyond their control, while refusing to enable carriers to limit such liability.

²For example, CTIA's "Petition for Declaratory Ruling" seeking preemption of state tower siting moratoria, DA 96-2140, was filed December 16, 1996, more than 15 months ago, but the Commission has let it languish.

cause uncertainties that will impair development of both Phase I and Phase II solutions. BAM thus agrees that the rules should be amended to state that (i) PSAPs may not limit CMRS carriers to recovering their implementation costs from customers, and (ii) PSAPs may not dictate the technology for supplying calling party number and nearest cell site information to them, as long as the carrier supplies that information.

BAM also agrees that the fixed Phase II implementation deadline must be modified to accommodate handset-based solutions for transmitting caller location data. For example, there are technical obstacles to system-based solutions in coastal areas, where triangulation or other system-based methods cannot presently identify the offshore location of a 911 call being made from a vessel, particularly with the degree of specificity required by the Phase II rules. BAM is working with other wireless carriers and manufacturers to address these and other technical issues. The Commission should, as CTIA requests, adjust its rules to reflect the reality that handset-based solutions may be the best, or only, answer to certain E911 issues. Handset-based location solutions, however, cannot be adopted on a "flash-cut" basis, because of the need to replace existing handsets, which can only occur over a transition period. Instead of a fixed deadline, the rules should thus require incorporation of location technology on a prospective basis for all newly manufactured handsets.

Accordingly, the Commission should grant the CTIA and BellSouth
Petitions for Reconsideration, and modify its wireless 911 and E911 rules as those
Petitions request.

Respectfully submitted,

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Dated: March 18, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have this 18th day of March, 1998, caused copies of the foregoing "Comments of Bell Atlantic Mobile, Inc. on Petitions for Reconsideration" to be sent by first-class mail, postage prepaid, to the following persons:

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